

Thank you for your settlement offer of November 30. We consider it a significant step forward in resolving this case. We have had an opportunity to discuss the offer with the Montana Department of Environmental Quality (MDEQ). Below we outline an alternative approach to address the litigation schedule and request a stay from the court in order to permit Montana's 2017 rulemaking process to proceed.

As we've discussed, MDEQ must engage in a rulemaking process regarding the variance effluent limitations over the next several months, including stakeholder involvement. Of course, neither the State of Montana nor the EPA are able to predetermine the outcome of the 2017 rulemaking that Montana is required to complete by July 1, 2017. While we cannot predict the outcome, we can provide additional detail on the process that will be used for any revisions made in 2017. Much of the process is also documented in DEQ Circular 12-B and MCA 75-5-313. DEQ Circular 12-B (page 3) specifies that the variance limits adopted in 2014 for the three categories of dischargers expire on July 1, 2017. In addition, MCA 75-5-313(7) requires MDEQ to review the treatment requirements every three years, hold a public hearing and conduct a rulemaking to provide stakeholders and the public an opportunity to comment on any proposed revisions.

During our conference call, Montana DEQ outlined the following timeline for moving forward with the 2017 rulemaking:

- December: MDEQ will survey Montana nutrient workgroup members to determine a date for January and February workgroup meetings.

- January: MDEQ holds nutrient workgroup meeting to discuss proposed revisions to DEQ Circular 12-B including proposed revised effluent limitations for the variance.
- February: MDEQ holds nutrient workgroup meeting to continue discussions of 2017 revisions to DEQ Circular 12-B. Draft revisions to the rule language
- March-June: MDEQ holds an additional nutrient workgroup meeting, if necessary. MDEQ will initiate the state public participation process on draft rules, hold a public hearing on draft rules, and will submit a final rule package to EPA for review and approval.

Based on this information, we present the following counter offer:

1. The parties jointly move to stay this litigation until after EPA acts on Montana's submission. Plaintiff would reserve the right to reopen this case based on the outcome of the 2017 rulemaking.

2. The State of Montana will review the treatment requirements in Table 12B-1 and determine whether the requirements should be extended without modification or modified and extended in a rulemaking proceeding. The State will also review the rule language in DEQ Circular 12-B. This review will follow the timelines described above.

3. Any replacement language or other numeric nutrient standard or variance provision promulgated by the State of Montana must be in compliance with the Clean Water Act and EPA's implementing regulation at 40 CFR Part 131, including 40 C.F.R. §

131.14. The State of Montana will provide the opportunity for public participation in accordance with 40 C.F.R. Parts 25 and 131 and will submit its final rule package to the EPA immediately upon adoption.

4. EPA will review and assess any replacement provision or other variance provision in accordance with the requirements of the Clean Water Act and EPA's implementing regulation at 40 C.F.R. Part 131 including 40 CFR § 131.14. EPA will expeditiously take action on the State of Montana's submission pursuant to Clean Water Act Section 303(c)

This proposal has the advantage of focusing the parties' efforts prospectively, rather than litigating rules that expire, as per Montana statute and regulation, by July 1, 2017. Montana's new action and EPA's approval or disapproval will be based upon the variance provisions of 40 CFR § 131.14, which was not effective as of EPA's February 2015 approval. If the litigation must continue after mid-2017, it will be more meaningful since any decision would be reached in the light of § 131.14.

In addition, as we have discussed, the timing is such that the court would not render an opinion until after the new rule is in place. We aren't in a position to demand repeal of state regulations or statutes or to retroactively modify our prior approval, but those things will take care of themselves in light of the new regulatory actions this summer. Plaintiff will have knowledge of the way Montana's action will be going early on, and will be able to provide input into the process.

We should discuss as soon as possible to avoid unnecessary expenditure of time and money by the parties if at all possible.